

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF PAUL)	
FARMER FOR AN AQUACULTURE LEASE)	
LOCATED IN THE MEDUNCOOK RIVER,)	FINDINGS OF FACT,
CUSHING, KNOX COUNTY, MAINE)	CONCLUSIONS OF LAW
)	AND DECISION

On August 30, 2005, Paul Farmer of Newcastle, Maine applied for a limited-purpose (experimental), commercial type, aquaculture lease of 0.275 acres in the coastal waters of the State of Maine, located west of Gay Island in the Meduncook River, in the town of Cushing, Knox County, Maine. The applicant requested the lease for a term of three years for the purpose of cultivating blue mussels (*Mytilus edulis*) using suspended culture techniques. The application was originally accepted as complete on September 1, 2005 and as amended on January 26, 2006.

As provided in 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on a limited-purpose lease application unless 5 or more persons request a public hearing within the 30-day comment period provided in 12 M.R.S.A. §6072-A(5). Notice of Mr. Farmer's application was published in the February 7, 2006 issue of the *Courier Gazette* newspaper. The applicant, the town of Cushing, riparian owners, and other interested parties were notified by letter dated January 30, 2006. Two comments and no requests for a hearing were received during the 30-day comment period.

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking

facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

**Evidence Concerning the Nature and
Impact of the Proposed Lease**

In accordance with 12 M.R.S.A. §6072-A (8) and Chapter 2.64(2) of the Department's regulations, Mr. Farmer submitted an application for a limited-purpose (experimental) aquaculture lease. This proposed experimental lease is sought to determine the commercial viability of raising blue mussels in the proposed location. The applicant requests the maximum lease term of three (3) years. The proposed site consists of 0.275 acre with approximate dimensions of 150 x 80 feet.

According to the application, the applicant currently holds a limited purposed aquaculture (LPA) license for a 20' x 20' mussel raft in the proposed lease area. The proposed lease activities would be conducted in the same manner as under the LPA license and would consist of growing mussels on dropper ropes suspended from one 40' x 40' raft. Wild seed would be collected on the site and socked onto the ropes. Predator nets would be hung around the perimeter of the raft to deter eider ducks. All mussels would be harvested by hand.

In accordance with Chapter 2.64(2), the applicant provided an environmental characterization of the proposed lease area. According to the application, the site was chosen because of the availability of wild seed, current speed, available phytoplankton, and water temperatures. The river bottom at the proposed lease site consists of mostly hard mud. The water depths are estimated to be between 25 and 35 feet. Local flora and fauna include brushy red weed, common periwinkles, hermit crabs, green crabs, rock crabs, and lobsters. The current flows in a northeast/southwest direction. According to the application, the lease activities should have a positive environmental impact, as the mussel raft will act as a sanctuary for a variety of marine life and the mussels will act as water filters.

According to the application, there are no moorings within the boundaries of the proposed lease area, aside from the moorings associated with the LPA license. There is an aquaculture lease for the suspended culture of oysters located approximately 50 feet south of

the proposed lease site. According to the applicant, there is limited lobster fishing in the immediate area, with more intensive lobstering in the channel between Gay and Morse Islands. According to the application, no lobster traps have been present within the boundaries of the proposed lease. Additionally, according to the application, the proposed lease site is located approximately 110 feet east of the main navigational channel. According to the applicant, the proposed lease will have no further impact on riparian landowners traveling to and from Gay Island, because they already avoid the proposed lease area due to the presence of the existing aquaculture lease. According to the application, the only activity that would be excluded from the lease area would be the removal or destruction of mussel culture equipment. Boaters may tie their boats off of the raft and lobster fishermen can place traps on the open areas of the lease.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on October 6, 2005. The AEC created a site report summarizing the information obtained during the site visit. According to the AEC's report, the proposed site is located off the western shore of Gay Island in the Meduncook River, approximately 175 feet north of an existing lease site. Although the AEC did not SCUBA dive on the proposed lease area, he has made SCUBA dives associated with the existing lease. According to the AEC, the bottom of the proposed lease is soft mud mixed with sand. A substantial eelgrass bed exists on the southern half of the existing lease site and extends at least $\frac{1}{4}$ mile along the western shore of Gay Island.

According to the AEC, the primary navigational channel is located to the west of the proposed lease site. Approximately $\frac{1}{4}$ mile of navigable waters would remain to the west of the lease site. The AEC spoke with the Lynde family, who operate the lease located to the south of the proposed lease, and they indicated to him that they support the proposed lease. There is a sand beach located to the east of the existing and proposed leases. According to the AEC, the beach is used primarily by the Lynde family and the proposed mussel raft would not

unreasonable interfere with access to the beach. Additionally, the only moorings and dock in the vicinity of the proposed lease belong to the Lyndes.

According to the AEC's report, a substantial amount of lobster fishing takes place in the navigational channel and around the vicinity of the proposed lease site. The proposed mussel raft would physically displace a small portion of traps. Cushing Harbormaster Danny Staples accompanied the AEC on the site visit. According to the AEC, Mr. Staples expressed a concern for any future expansion of the lease area, but not for the proposed 150' x 80' area.

Inland Fisheries and Wildlife biologist Keel Kemper provided comments on the proposed lease. According to Mr. Kemper, the proposed lease area is not located within an Essential Habitat. Additionally, he indicated that he spoke with the applicant and has no concerns regarding the proposed lease.

Two comment letters were submitted by a riparian landowner. He stated that riparian use of the area has become more hazardous and more inconvenient due to the existing lease operation. He also stated that the limited lobster fishing is due to the presence of the existing lease. He stated that he is concerned with by-products of the operation and access to the island.

Findings of Fact

The proposed lease is located west of Gay Island in the Meduncook River, approximately 110 feet east of the main navigation channel. Approximately ¼ mile of navigable waters would remain to the west of the lease site. The applicant currently holds an LPA license for a 20' x 20' mussel raft located within the proposed lease boundaries. There is a lease for the suspended culture of oysters located approximately 175 feet south of the proposed site. There are no moorings or docks located within the boundaries of the proposed lease site, other than those associated with the applicant's LPA license. No use of riparian land was requested or required. There is a sand beach on Gay Island located to the east of the proposed lease. The applicant's proposed 40' x 40' mussel raft would not interfere with access to the beach.

Based on this evidence, I find that the lease will not unreasonably interfere with navigation or the ingress and egress of riparian owners.

Fishing in the area of the proposed lease site consists of lobster fishing, which mainly occurs in the channel to the west of the proposed lease. The proposed 150' x 80' lease area would displace a small number of lobster traps. The nearest existing aquaculture lease is located approximately 175 feet south of the proposed lease. The holders of the existing aquaculture lease support the proposed lease. Boating, lobster fishing and recreational fishing would be permitted on the open areas of the lease site. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing fauna observed at the proposed site consist of brushy red weed, common periwinkles, hermit crabs, green crabs, rock crabs, and lobsters. The water depths at the proposed lease site are estimated to be between 25 and 35 feet. The proposed lease is not located within an Essential Wildlife Habitat. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

All seed mussels will be obtained from the wild on the lease site. Based on this evidence, I find that there is an available source of blue mussels.

The proposed lease site is not located within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;

3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of blue mussels; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested limited-purpose commercial aquaculture lease of 0.275 acres from the date of this decision for the purpose of cultivating blue mussels (*Mytilus edulis*) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$5,000 conditioned upon his performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, lobster fishing and recreational boating and fishing shall be allowed on the open areas of the lease; and

(2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

Mary E. Costigan (Hearing Officer)
Department of Marine Resources